

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2006-019108

01/10/2007

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT  
B. Navarro  
Deputy

ARIZONA STATE, et al.

MICHELLE HIBBERT SWANN

v.

VILLAGE OF OAK CREEK COMMUNITY  
CHURCH OF THE NAZARENE INC

JERRY STEELE

JOHN TREBON  
JOSEPH INFRANCO  
ALLIANCE DEFENSE FUND  
15333 N PIMA RD STE 165  
SCOTTSDALE AZ 85260

**MINUTE ENTRY**

The Court has taken under advisement and has considered the Application for Temporary Restraining Order and related documents, the Defendant's Objection to the Motion for Preliminary the evidence presented at the hearing, and the arguments of counsel.

The Court finds that the State's need to complete its investigation is not a valid basis, in and of itself, for converting the Temporary Restraining Order to an Order granting Injunctive Relief. Neither the Pastor nor other Church personnel may be compelled to cooperate in the State's investigation. As a practical matter, the State does not need the lease to continue to be in force and effect to investigate the claim of Arizona Civil Rights Act. Instead, the State is arguing that it needs injunctive relief in order to prevent irreparable harm as a result of Defendant's alleged discriminatory practices.

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The Defendant argues that the parents, and the sixty one children, have no state or federal constitutional right at stake in these proceedings. That is not correct. *Wisconsin v. Yoder*, 406 U.S. 205, 232, 92 S.Ct. 1526, 1541, 32 L.Ed.2d 15 (1972). More importantly, the retaliatory termination of the lease, done in response to the Defendant's efforts to force its religious beliefs onto a publicly funded school, appears to have been done in violation of the Establishment Clause. Therefore, there are rights which trigger the consideration of the State's allegation of irreparable harm.

The Court does not agree with the analysis that the Church becomes a place of public accommodation when it decides to lease to a publicly funded school. Rather, the Court finds that the leased premises are unambiguously a place of public accommodation when the premises are operated as a school. The Church is not claiming that the school is interfering with Church services or functions when the leased premises operate as a Church.

The Court turns to the factors for consideration in whether to grant a preliminary injunction. The Court finds, from the record, that there is a strong likelihood of success on the merits by the State in its efforts to show that the Defendant engaged in conduct that was discriminatory and in violation of the Arizona Civil Rights Act. The Court finds that, in a balance of hardships, there is literally no interference with Church activities during hours when the premises operate as a Church, but substantial harm to the tenant if the Church is permitted to turn the schoolchildren out onto the street to find some other school other than that of their parent's choosing. For the foregoing reasons,

**IT IS ORDERED** granting the State's Application for Injunctive Relief, to remain in full force and effect until **February 28, 2007**.

FILED: Exhibit Worksheet